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Office of the Regional Administrator

February 12, 2020

Via Certified Mail – Return Receipt Requested

Managing Agent
Kinder Morgan Bulk Terminals, LLC
P.O. Box 83838
Portland, Oregon 97283-0838

Managing Agent
Kinder Morgan Bulk Terminals, LLC
1001 Louisiana Street, Suite 1000
Houston, Texas 77002

Re: Notice of Intent to File Suit under the Clean Water Act.

Dear Managing Agent:

This letter provides Kinder Morgan Bulk Terminals, LLC (hereinafter “Kinder Morgan”) with sixty days’ notice of the Northwest Environmental Defense Center’s intent to file a citizen lawsuit against it under Section 505 of the Clean Water Act, 33 U.S.C. §1365, for the Clean Water Act (“CWA”) and National Pollutant Discharge Elimination System (“NPDES”) permit violations alleged and described in this letter. The Northwest Environmental Defense Center (hereinafter “NEDC”) is a non-profit organization dedicated to protecting the natural environment of the Pacific Northwest. Kampmeier & Knutsen, PLLC and NEDC staff attorney Jonah Sandford represent NEDC in this matter. Any response to this notice of intent to sue should be directed to Paul Kampmeier at Kampmeier & Knutsen PLLC at the address below.

This notice letter pertains to the Kinder Morgan facility located at 11040 North Lombard Street, Terminal 4, Portland, Oregon 97203 (hereinafter “the Facility” or “Terminal 4”). To limit and control water pollution in Portland, Oregon, the Oregon Department of Environmental Quality (hereinafter “ODEQ”) authorized Kinder Morgan to discharge pollutants and stormwater associated with industrial activity from the Facility to the Willamette River from July 1, 2012 to June 30, 2017 by granting Kinder Morgan coverage under Oregon’s 2012 General NPDES Stormwater Discharge Permit No. 1200-Z (Permit and File Number 100025) (hereinafter “2012 Permit”). ODEQ then authorized Kinder Morgan to discharge pollutants and stormwater associated with industrial activity from the Facility to the Willamette River from August 1, 2017 to July 31, 2022 by granting Kinder Morgan coverage under

Oregon's 2017 General NPDES Stormwater Discharge Permit No. 1200-Z (Permit and File Number 100025), which permit ODEQ reissued upon reconsideration on October 23, 2018 (hereinafter "2017 Permit"). The 2012 Permit and 2017 Permit (collectively "the Permits") set forth specific requirements Kinder Morgan must comply with to protect Oregon waters and to ensure Kinder Morgan's compliance with the federal Clean Water Act at the Facility.

Kinder Morgan has violated and continues to violate the terms and conditions of the Permits. NEDC intends to sue Kinder Morgan for the alleged violations of the Permits described herein under the Clean Water Act's citizen suit provision, which authorizes citizens to file a federal lawsuit against any person (including a corporation or other business entity) "alleged to be in violation of an effluent standard or limitation" under the Act, which includes "a permit or condition thereof issued under" the Act's NPDES permit program. 33 U.S.C. § 1365(a)(1), (f). All terms and conditions of a state-issued NPDES permit, such as 1200-Z permits, are enforceable via federal court citizen suits. *See, e.g., Nw. Env'tl. Advocates v. City of Portland*, 56 F.3d 979, 986 (9th Cir. 1995); *Or. State Pub. Interest Research Grp., Inc. v. Pac. Coast Seafoods Co.*, 361 F. Supp. 2d 1232, 1236, 1238 (D. Or. 2005). Additionally, NEDC intends to sue Kinder Morgan for violating Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), for discharging pollutants, stormwater associated with industrial activity, non-industrial stormwater, and process wastewater to the Willamette River from point sources at the Facility without authorization of an NPDES permit.

Unless Kinder Morgan promptly resolves its violations of the Permits and the Clean Water Act to NEDC's satisfaction, NEDC will file a citizen lawsuit against Kinder Morgan in U.S. District Court immediately following the expiration of the required sixty-day notice period that commences with this notice letter. NEDC intends to seek injunctive relief and civil penalties of up to \$37,500 per day for each violation of the CWA that occurred before November 2, 2015, and of up to \$55,800 per day for each violation that occurred after that date. NEDC intends to sue for all violations, including those discovered after the date of this notice letter and those occurring after NEDC files a complaint in court. If Kinder Morgan has any information showing that one or more of the violations outlined in this notice did not occur or is stated incorrectly, please provide that information to NEDC immediately, specifying the violation in question.

I. BACKGROUND.

Congress enacted the Clean Water Act in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). In doing so, Congress declared a national goal of eliminating discharges of pollutants to navigable waters by 1985. Section 301 of the CWA—the heart of the statute—prohibits the discharge of pollutants except, *inter alia*, in accordance with the terms of a NPDES permit issued pursuant to section 402 of the Act. 33 U.S.C. § 1311(a).

The State of Oregon implements a NPDES permit program administered by ODEQ. ODEQ periodically issues a general NPDES permit authorizing discharges of stormwater associated with industrial activity in Oregon. For facilities that obtain coverage under it, ODEQ's current General NPDES Stormwater Discharge Permit Number 1200-Z authorizes discharges of industrial stormwater, provided the discharges are in compliance with the terms and conditions of the permit. Any other direct or indirect discharge to waters of the state is prohibited, and any noncompliance with an NPDES permit constitutes a violation of the Clean Water Act and is grounds for enforcement action.

A central requirement of ODEQ's 1200-Z NPDES permit is that permittees must properly prepare, implement, and keep current a Stormwater Pollution Control Plan ("SWPCP"). There are a number of requirements that must be included in a SWPCP, including a site description, adequate site controls that eliminate or minimize exposure of pollutants to stormwater, and recordkeeping, sampling, and reporting procedures. A SWPCP's effectiveness is then determined by comparing stormwater monitoring results with pollutant benchmarks in the 1200-Z Permit. The benchmarks are numeric concentration levels set for certain pollutants, which provide a standard that determines whether a facility's SWPCP is effectively reducing or eliminating stormwater pollution in compliance with the permit. If a stormwater discharge exceeds an established benchmark, the permittee must investigate the cause of the exceedance, review the SWPCP, and determine what corrective actions must be taken to ensure future compliance with these standards. Visual monitoring for floating solids and oil and grease sheen provide an additional assurance that the SWPCP is effective. In no event may anyone, permitted or unpermitted, discharge pollutants in an amount or manner that causes or contributes to a violation of state water quality standards.

II. KINDER MORGAN'S NPDES PERMIT VIOLATIONS.

Kinder Morgan has violated and is violating the Clean Water Act by discharging pollutants and stormwater associated with industrial activity from its Facility in violation of the terms and conditions of the Permits. Kinder Morgan is in ongoing violation of an "effluent standard or limitation" under the Clean Water Act. *Id.* § 1365(a)(1).

A. Violations of the Narrative, Technology-Based Effluent Limitations and the Control Measures Required to Meet Those Effluent Limitations.

Kinder Morgan has violated Schedules A.1., A.3.a., and A.3.b. in the Permits every day since February 12, 2015 by failing to meet the narrative technology-based effluent limits in Schedule A.1. and Schedule E in the Permits, and by failing to select, design, install, implement, and maintain control measures necessary to meet those limits, in violation of Schedules A.3.a. and A.3.b. in the Permits.

Schedule A.1. of the 2017 Permit requires Kinder Morgan to meet that permit's listed narrative technology-based effluent limits. Specifically, Kinder Morgan must, among other things, "minimize exposure of manufacturing, processing, [and] material storage areas...to rain, snow, snowmelt and runoff" (Schedule A.1.a); employ measures to eliminate or minimize oil and grease contamination of stormwater discharges (Schedule A.1.b); "recycle or properly dispose of wastes to eliminate exposure of pollutants to stormwater" (Schedule A.1.c); "stabilize exposed areas and contain runoff using structural and nonstructural controls to minimize erosion of soil at the site and sedimentation" (Schedule A.1.d); "employ screens, booms, settling ponds, or other methods to eliminate or minimize waste, garbage and floatable debris in stormwater discharges and ensure that this debris is not discharged to receiving waters" (Schedule A.1.e); "minimize generation of dust and off-site tracking of raw, final or waste materials" (Schedule A.1.f); "routinely clean all exposed areas that may contribute pollutants to stormwater using such measures as sweeping at regular intervals, litter pick-up, keeping materials orderly and labeled, prompt clean-up of spills and leaks, proper maintenance of vehicles and stowing materials in appropriate containers" (Schedule A.1.g); minimize the potential for spills and develop spill prevention and response plans (Schedule A.1.h); regularly inspect, clean, maintain and repair all

equipment, systems, areas, and stormwater control measures (Schedule A.1.i); develop and maintain an employee education program on the components and goals of the SWPCP (Schedule A.1.j); and eliminate any non-stormwater discharges not authorized a NPDES permit.

Additionally, Schedule A.3.a. of the 2017 Permit requires Kinder Morgan “to select, design, install, implement and maintain control measures...to meet the narrative and numeric technology based effluent limits in Schedule A.1., A.2. and Schedule E of this permit and [to] describe[] these measures...in the SWPCP.” Schedule A.3.b. of the 2017 Permit requires Kinder Morgan to “...reduce or eliminate pollutants to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of best industry practice.” Schedules A.1., A.3.a., and A.3.b. in the 2012 Permit imposed the same or substantially similar obligations on Kinder Morgan.

Kinder Morgan violated and continues to violate these permit conditions by failing to meet the narrative technology-based effluent limits in Schedule A.1. of the Permits and by failing to select, design, install, implement, and maintain control measures to ensure compliance with the narrative technology-based effluent limits in Schedules A.1. and Schedules E of the Permits. These violations have occurred each and every day since February 12, 2015.

1. Specific violations documented by agency personnel.

Portland Bureau of Environmental Services (“BES”) staff have documented several *specific* instances of Kinder Morgan’s violations of Schedules A.1., A.3.a., and A.3.b. of the Permits. At a January 20, 2017 inspection of the Facility, BES staff observed multiple areas with oil sheens and soda ash spillage outside the Facility’s rail car unloading facility. BES staff observed similar soda ash spillage at an April 19, 2018 inspection, during which BES staff also observed uncovered waste storage dumpsters at the Facility, as well as discharges of wastewater from the Facility via seeps and holes in the dock. During a January 11, 2019 inspection, BES staff observed “significant debris accumulation” near catch basin L-18 and observed that there were not “adequate site controls installed to stabilize soils in exposed areas where industrial activity has taken place in the past.” And during a January 22, 2020 inspection, BES staff observed that “filters in some catch basins were missing or damaged,” and noted that records reviewed at the site showed required monthly sweeping had not occurred in June 2019 or September 2019.

On each of these days, Kinder Morgan was in violation of Schedules A.1., A.3.a., and A.3.b. of the Permits because on each of these days Kinder Morgan failed to comply with the Permit’s narrative technology-based effluent limits, which require Kinder Morgan to routinely clean all areas that may contribute pollutants to stormwater, promptly cleanup spills and leaks, and sweep at regular intervals; require Kinder Morgan to minimize exposure of stormwater to pollutants; require Kinder Morgan to cover wastes and stabilize soils; require Kinder Morgan to eliminate unauthorized non-stormwater discharges; and require Kinder Morgan to maintain and repair all control measures, including catch basins. Additionally, Kinder Morgan violated Schedules A.1., A.3.a., and A.3.b. of the Permits each and every other day when Kinder Morgan allowed oil sheens or spilled soda ash to remain spilled at the Facility, especially if such spills were outside; when Kinder Morgan left wastes or garbage uncovered; when Kinder Morgan washed vehicles or otherwise created wastewater that discharged to the Willamette River via holes and seeps in the dock; and when Kinder Morgan failed to implement site controls to stabilize soils in exposed areas.

2. *Kinder Morgan's stormwater discharges regularly exceed numeric benchmarks in the 2012 and 2017 Permits, demonstrating ongoing failures to comply with the permits.*

Water quality sampling conducted by Kinder Morgan at the Facility also demonstrate that Kinder Morgan violated Schedules A.1., A.3.a., and A.3.b. in the Permits. Schedules A.9. of the Permits explain that pollutant benchmarks in the permits are designed to assist the permit registrant in determining whether its site controls are effectively reducing pollutant concentrations in stormwater discharged from the site. Schedules A.9. and B.1.a. of the Permits then require Kinder Morgan to monitor stormwater discharges from the Facility to determine whether the discharges exceed any of the following statewide benchmarks: total copper, 0.020 mg/L; total lead, 0.040 mg/L; total zinc, 0.12 mg/L; pH, 5.5 – 9.0 S.U.; total suspended solids, 30 mg/L¹; and total oil and grease, 10 mg/L. Schedules E.Q.4. and B.1.a. of the Permits require Kinder Morgan to monitor stormwater discharges from the Facility to determine whether the discharges exceed any of the following sector-specific benchmarks: Total Aluminum, 0.75 mg/L; and Total Iron, 1.0 mg/L. And Schedules B.1.b. of the Permits and ODEQ's permit assignment letters to Kinder Morgan require Kinder Morgan to monitor stormwater discharges from the Facility to determine whether the discharges exceed, among others, any of the following impairment pollutant benchmarks: Dissolved Copper, 0.012 mg/L²; Total Iron, 1.0 mg/L; Benzo(a)anthracene, 0.001 mg/L; Benzo(a)pyrene, 0.001 mg/L; Benzo(b)fluoranthene 3,4, 0.001 mg/L; Benzo(k)fluoranthene, 0.001 mg/L; Chrysene, 0.001 mg/L; Dibenz(a,h)anthracene, 0.001 mg/L; and Indeno(1,2,3-cd)pyrene, 0.001 mg/L.³

As indicated in Tables 1, 2, and 3 that are attached to this letter as Appendix A—where sample results in bold text indicate that a sample exceeded a pollutant benchmark or reference concentration—stormwater discharges from the Facility have repeatedly exceeded the state-wide, sector-specific, and impairment pollutant benchmarks in the Permits and the Facility's permit assignment letters. The history and pattern of stormwater sample results that exceed a state-wide, sector-specific, or impairment pollutant benchmark or reference concentration for the Facility demonstrate that Kinder Morgan violated its Permits each and every day since February 12, 2015 by failing to comply with the narrative technology-based effluent limits in Schedules A.1. and Schedules E in the Permits, and by failing to select, design, install, implement, and maintain control measures necessary to meet those limits, in violation of Schedules A.3.a. and A.3.b. in the Permits. Kinder Morgan's Facility's site controls are not effectively eliminating or minimizing pollutants in stormwater discharged from the Facility, and are not reducing or eliminating pollutants to the extent achievable, in violation of Schedules A.1., E, A.3.a., and A.3.b. in the Permits.

¹ In the 2012 Permit the benchmark for TSS was 100 mg/L.

² Kinder Morgan is required to monitor for dissolved copper under the 2017 Permit but it was not required to monitor for dissolved copper under the 2012 Permit.

³ ODEQ issued Kinder Morgan NPDES permit coverage and set reference concentrations for impairment pollutants for the Facility by letters dated May 22, 2014; August 30, 2017; September 5, 2017; December 4, 2017; and October 23, 2018.

3. *Kinder Morgan's failure to acknowledge and properly manage discharges from Outfalls 003 and 004 demonstrates ongoing failures to comply with the permits.*

Kinder Morgan also violated Schedules A.1., A.3.a., and A.3.b. in the Permits each and every day since February 12, 2015 by failing to comply with the narrative technology-based effluent limits in Schedules A.1. and E of the Permits, and by failing to select, design, install, implement, and maintain control measures necessary to meet those limits, in violation of Schedules A.3.a. and A.3.b. in the Permits, for Outfall 003 and Outfall 004 at the Facility. Between February 12, 2015 and late 2018, Kinder Morgan did not know about or acknowledge discharges to the Willamette River from Outfall 003 and 004 and so Kinder Morgan was not making any attempt to comply with Schedules A.1., E, A.3.a., or A.3.b. in the Permits regarding those outfalls. Recent benchmark exceedances documented in Tables 1-3, Appendix A, for Outfall 003 demonstrate that even after acknowledging discharges from Outfall 003 and 004 in 2018, Kinder Morgan continues to violate the narrative technology-based effluent limits in Schedules A.1. and E of the Permits for those outfalls, and continues to violate Schedules A.3.a. and A.3.b. in the Permits for those outfalls, by failing to select, design, install, implement, and maintain control measures necessary to meet the limits in Schedules A.1. and E of the Permits.

B. SWPCP Violations.

Schedules A.3.a. of the Permits require Kinder Morgan to describe its pollutant control measures, maintenance schedules, and the frequency of housekeeping measures in its SWPCP. Schedules A.6.c. of the 2017 Permit requires Kinder Morgan to include in its SWPCP each narrative technology-based effluent limit to eliminate or reduce the potential to contaminate stormwater and prevent any violation of instream water quality standards. Schedules A.7. of the Permits set forth the requirements for SWPCPs, including in Schedule A.7.b.vi. of the 2017 Permit and in Schedule A.7.b.v. of the 2012 Permit the requirement that SWPCPs include a description of control measures installed and implemented to meet the technology and water quality based requirements in Schedules A.1. – A.5. and any applicable sector-specific requirements in Schedule E. Schedule A.6.c. of the 2012 Permit and Schedule A.6.d. of the 2017 Permit then require Kinder Morgan to implement the SWPCP and any revisions to it.

Kinder Morgan violated these permit conditions each and every day since February 12, 2015 by failing to maintain and implement an adequate SWPCP at the Facility. The extensive benchmark exceedances documented in Tables 1-3 in Appendix A, the extensive water quality violations and corrective action violations described herein, and ongoing discharges of polluted industrial stormwater from the Facility demonstrate that Kinder Morgan is not maintaining or implementing a SWPCP that includes adequate control measures and all of the required SWPCP components.

Indeed, evidence in the file indicates that Kinder Morgan violated these permit conditions during the following periods and in the following manners: September 2019 through January 2020 (failure to replace catch basin inserts as required); May 2019 through January 2020 (failure to change or clean catch basins on a quarterly basis as required); January 22, 2020 (missing or damaged filters in some catch basins); June 2019 and September 2019 (failure to sweep monthly as required); every day since February 12, 2015 (failure to adequately sweep up soda ash spillage as required); every day since February 12, 2015 (failure to identify and implement management measures to control discharges of impairment pollutants from the Facility); January 20, 2017 (failure to promptly clean up oil sheens at the

Facility); July 2018 through January 2019 (failure to sweep up, pick up litter, and stow materials away from catch basins as required); June 2018 through March 2019 (failure to implement effective site controls to stabilize soils in exposed areas where industrial activities have taken place in the past and to minimize soil erosion); and every day since February 12, 2015 (failure to enclose industrial processes and materials to prevent fugitive dust emissions, spillage and tracking of materials, and related problems).

In addition, Kinder Morgan violated these permit conditions each and every day since February 12, 2015 by maintaining and implementing inadequate SWPCP provisions applicable to Outfalls 003 and 004 at the Facility. Kinder Morgan did not acknowledge discharges to the Willamette River from Outfall 003 and Outfall 004 until late 2018, so between February 12, 2015 and when Kinder Morgan revised its SWPCP to acknowledge those outfalls it violated those permit conditions by failing to have any SWPCP provisions applicable to those outfalls. But even after revising its SWPCP to acknowledge Outfalls 003 and 004, Kinder Morgan's SWPCP remains deficient and in violation of these permit conditions because it fails adequately to address impairment pollutants, metals, and other pollutants being discharged to the Willamette River from those outfalls.

For example, Schedule A.7.b.v. of the 2017 Permit requires Kinder Morgan to include in its SWPCP a description of the potential pollutant sources that could be present in stormwater discharges for each area of the site where a reasonable potential exists for contributing pollutants to stormwater runoff. Schedule A.7.b.vi. of the 2017 Permit requires Kinder Morgan to include in its SWPCP a description of control measures installed and implemented to meet the technology and water quality based requirements in Schedules A.1 – A.5 of the Permits and any applicable sector-specific requirements in Schedule E of the Permits, including a description of how the stormwater control measures address potential pollutant sources from industrial activities and significant materials on-site, spills and leaks and authorized non-stormwater discharges. And Schedule A.7.b.viii. of the 2017 Permit requires Kinder Morgan to include in its SWPCP an estimate of the amount of impervious surface area (including paved areas and building roofs) and the total area drained by each stormwater discharge point. Schedules A.7.b. in the 2012 Permit imposed the same or substantially similar obligations on Kinder Morgan. Kinder Morgan violated these permit conditions each and every day since February 12, 2015 by failing to include in its SWPCP the required information for areas of the Facility that drain to and through Outfall 003 and Outfall 004.

C. Corrective Action Violations.

Kinder Morgan violated Schedules A.10.a. and A.10.b. of the Permits by failing to comply with the corrective action requirements in those permit conditions. Schedules A.10.a. of the Permits require Kinder Morgan to undertake a Tier I corrective action response each time a stormwater monitoring result exceeds any state-wide, sector-specific, or impairment pollutant benchmark. Specifically, that permit condition requires Kinder Morgan, within 30 calendar days of obtaining monitoring results demonstrating a benchmark exceedance, to: (1) investigate the cause of the elevated pollutant levels and develop a plan for controlling significant materials from previous operations; (2) review the SWPCP and the selection, design, installation and implementation of control measures to ensure compliance with the permit, including evaluating whether treatment measures have been properly installed, maintained and implemented, and evaluate whether additional removal or modifications to pollutant source isolation are necessary; (3) revise the SWPCP if necessary and submit the revised SWPCP and a schedule for

implementing additional control measures to ODEQ or BES; and (4) write a Tier I report and, if exceedance of an impairment pollutant benchmark triggered the Tier I corrective action response, submit the Tier I report to ODEQ or BES within sixty days of receiving the monitoring results that triggered the corrective action response.

Schedule A.10.b. of the 2012 Permit required Kinder Morgan to implement corrective actions before the next storm event or as soon as practicable, while Schedule A.10.b. of the 2017 Permit requires Kinder Morgan to implement corrective actions no later than thirty days after receiving monitoring results showing an exceedance of any applicable statewide benchmark in Schedule A.9. of the Permits, any sector-specific benchmark in Schedule E of the Permits, or any reference concentration for impairment pollutants identified in Kinder Morgan's permit assignment letters; if Kinder Morgan cannot complete corrective actions within that time period it must explain the reasoning for the delay in a Tier I report. Kinder Morgan violated these permit conditions as follows.

1. Violations of the investigation and reporting requirements in Schedule A.10.a.

First, Kinder Morgan violated Schedule A.10.a.iii of the 2012 Permit, and Schedule A.10.a.iv. of the 2017 Permit, by preparing and/or submitting inadequate Tier I corrective action reports. These Permit conditions require Kinder Morgan to summarize specific information in a "Tier I Report," including: (1) the results of its investigation into the cause of elevated pollutant levels; (2) corrective actions taken or to be taken, or, if determined that no corrective action is necessary, the basis for this determination; and (3) documentation of whether SWPCP revisions are necessary. Kinder Morgan violated these permit conditions because Tier I Corrective Action Reports with the following report dates do not meet these criteria for at least the following reasons:

- All Tier I reports prepared by Kinder Morgan since February 12, 2015 are deficient and violate the Permits because they claim, incorrectly, that Kinder Morgan was complying with its SWPCP and that no SWPCP revisions were necessary. As demonstrated by the exceedances listed in Table 1-3 in Appendix A, as well as by other evidence and records available to NEDC, Kinder Morgan clearly was not complying with its SWPCP, or it needed to revise its SWPCP to address benchmark exceedances at the Facility, or both;
- All Tier I reports prepared by Kinder Morgan since February 12, 2015 in response to exceedances of the reference concentrations for impairment pollutants—for exceedances of benchmarks established for Dissolved Copper, Total Iron, Benzo(a)anthracene, Benzo(a)pyrene, Benzo(b)fluoranthene 3,4, Benzo(k)fluoranthene, Chrysene, Dibenz(a,h)anthracene, and Indeno(1,2,3-cd)pyrene—are deficient and violate the Permits because they do not explain what steps Kinder Morgan was taking to investigate exceedances of the reference concentrations for these impairment pollutants at the Facility; they do not identify corrective actions Kinder Morgan was taking to reduce or eliminate exceedances of the reference concentrations for these impairment pollutants at the Facility; and they do not address whether Kinder Morgan was revising its SWPCP to address exceedances of reference concentrations for these impairment pollutants;
- The December 13, 2016 Tier I report Kinder Morgan prepared in response to benchmark exceedances on October 26, 2016 is deficient and violates the 2012 Permit because it does

not contain a timeline for when Kinder Morgan will complete its examination into the source of the pollutants;

- The January 6, 2017 Tier I report Kinder Morgan prepared in response to benchmark exceedances on November 22, 2016 is deficient and violates the 2012 Permit because it failed to include a corrective action to address zinc exceedances. Any subsequent revisions were submitted late, and so violate the 2012 Permit's deadlines for submitting Tier I reports, and also demonstrate that the original report did not meet 2012 Permit conditions;
- The December 28, 2017 Tier I report Kinder Morgan prepared in response to benchmark exceedances on November 10, 2017 and November 30, 2017 is deficient and violates the 2017 Permit because it fails to address dissolved lead and dissolved copper at Outfall A (001); fails to include corrective actions for November 10, 2017 zinc benchmark exceedances at Outfall B (002); and fails to include a replacement treatment measure for Outfall A (001) after Kinder Morgan determined that a previous treatment method was ineffective. Additionally, any subsequent revisions were submitted late, and so violate the 2017 Permit's deadlines for submitting Tier I reports, and also demonstrate that the original report did not meet Permit conditions;
- Kinder Morgan failed to prepare timely Tier I reports for observations of turbid water discharges on January 23, 2018 and February 15, 2018, in violation of Schedule A.10.a. and Schedule B.7.f.vi. of the 2017 Permit. The June 22, 2018 Tier I report, which purports to revise a Tier I report dated December 28, 2017 to include a Tier I report regarding those turbid water discharges, is deficient and violates the 2017 Permit because although that Tier 1 Report included mention of the visual observations, it did not mention any specific corrective actions taken or to be taken with respect to those observations;
- The Tier I report dated November 21, 2018 is deficient and violates the 2017 Permit because it failed to identify corrective actions Kinder Morgan would take to address exceedances of metals benchmarks at the Facility and instead stated that Kinder Morgan was in the process of selecting new best management practices to address those pollutants; because it failed to identify any corrective actions to address exceedances at Outfall 003; because it failed to identify specifically the SWPCP revisions to be made in response to exceedances; and because it failed to include revised SWPCP pages. Any subsequent revisions to that Tier I report were submitted late, and so violate the 2017 Permit's deadlines for submitting Tier I reports, and also demonstrate that the original report did not meet 2017 Permit conditions.
- The March 29, 2019 Tier I report Kinder Morgan prepared in response to exceedances on January 20, 2019 and February 14, 2019 is deficient and violates the 2017 Permit because Kinder Morgan failed to prepare it within 30 days of receiving sample results on February 1 and 6, 2019; and
- The July 29, 2019 Tier I report Kinder Morgan prepared in response to exceedances on May 15, 2019 is deficient and violates the 2017 Permit because Kinder Morgan failed to prepare it within 30 days of receiving sample results on June 4, 2019.

Additionally, Kinder Morgan violated Schedule A.10.a.iii of the 2012 Permit, and Schedule A.10.a.iv. of the 2017 Permit, by preparing and/or submitting Tier I corrective action reports that fail to identify corrective actions taken or to be taken by the deadlines stated in Schedules A.10.b. of the Permits, including the dates corrective actions were completed or expected to be completed, without explaining why Kinder Morgan needed additional time to complete the corrective action. The following Tier I reports are deficient and violate Schedule A.10.a.iii of the 2012 Permit, and Schedule A.10.a.iv. of the 2017 Permit, for these reasons:

- The June 10, 2015 Tier I report prepared in response to exceedances on May 11, 2015;
- The November 30, 2015 Tier I report prepared in response to exceedances on October 25, 2015;
- The May 13, 2016 Tier I report prepared in response to exceedances at on April 3 and/or 4, 2016;
- The December 13, 2016 Tier I report prepared in response to exceedances on October 26, 2016;
- The March 31, 2017 Tier I report prepared in response to exceedances on February 15, 2017;
- The April 28, 2017 Tier I report prepared in response to exceedances on March 15, 2017;
- The December 28, 2017 Tier I report prepared in response to exceedances on November 10, 2017 and November 30, 2017;
- The July 22, 2018 Tier I report prepared in response to exceedances on June 8, 2018;
- The December 21, 2018 Tier I report prepared in response to exceedances on November 23, 2018;
- The July 29, 2019 Tier I report prepared in response to exceedances on May 15, 1019;
- The October 30, 2019 Tier I report prepared in response to exceedances on September 17, 1019; and
- The Tier I report dated October 30, 2019 but submitted to BES on December 2, 2019 and prepared in response to exceedances at Outfalls A and B on September 17, 2019 and October 16, 2019.

Kinder Morgan violated Schedule A.10.a.iii of the 2012 Permit, and Schedule A.10.a.iv. of the 2017 Permit, by preparing and/or submitting inadequate Tier I corrective action reports. These violations occurred each and every time Kinder Morgan prepared or submitted a Tier I report since February 12, 2015.

2. *Violations of the corrective action requirements in Schedule A.10.b.*

Second, Kinder Morgan violated Schedules A.10.b. of the Permits by failing to implement corrective actions in a timely manner, including implementation of modified control measures, even though such corrective actions are necessary to meet the effluent limitations and other conditions in the Permits. As documented in Tables 1-3 in Appendix A to this notice letter, Kinder Morgan regularly discharges in excess of the statewide benchmarks in Schedules A.9. of the Permits, the sector-specific benchmarks in Schedule E of the Permits, and the reference concentrations for impairment pollutants identified in Kinder Morgan's permit assignment letters. Each exceedance triggered Kinder Morgan's obligation to implement corrective actions by the deadlines stated in Schedules A.10.b. of the Permits. The repeated exceedances of multiple pollutant benchmarks and reference concentrations demonstrates that Kinder Morgan is not implementing corrective actions in a timely manner as required by the Permits.

Specifically, with regard to discharges from **Outfall A and/or Outfall 001:**

- Kinder Morgan violated the Tier I corrective action requirements with regard to total aluminum, total iron, dissolved copper, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene 3,4, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, and indeno(1,2,3-cd)pyrene each and every day since March 14, 2015 by failing to implement corrective actions in compliance with the deadlines stated in the Permits;
- Kinder Morgan violated the Tier I corrective action requirements with regard to TSS, total copper, and dissolved copper each and every day since November 10, 2017 by failing to implement corrective actions in compliance with the deadlines stated in the 2017 Permit; and
- Kinder Morgan violated the Tier I corrective action requirements with regard to pH, total lead, and total zinc each and every day since March 14, 2015 by failing to implement corrective actions in compliance with the deadlines stated in the Permits.

In addition, with regard to discharges from **Outfall B and/or Outfall 002:**

- Kinder Morgan violated the Tier I corrective action requirements with regard to total aluminum and total iron each and every day since March 14, 2015 by failing to implement corrective actions in compliance with the deadlines stated in the Permits;
- Kinder Morgan violated the Tier I corrective action requirements with regard to dissolved copper each every day since October 5, 2018 by failing to implement corrective actions in compliance with the deadlines stated in the 2017 Permit;
- Kinder Morgan violated the Tier I corrective action requirements with regard to benzo(a)pyrene and chrysene each and every day since October 16, 2019 by failing to implement corrective actions in compliance with the deadlines stated in the 2017 Permit;

- Kinder Morgan violated the Tier I corrective action requirements with regard to TSS and benzo(b)fluoranthene 3,4 each and every day since November 10, 2017 by failing to implement corrective actions in compliance with the deadlines stated in the 2017 Permit;
- Kinder Morgan violated the Tier I corrective action requirements with regard to total copper and dissolved copper each and every day since October 5, 2018 by failing to implement corrective actions in compliance with the deadlines stated in the 2017 Permit;
- Kinder Morgan violated the Tier I corrective action requirements with regard to pH each and every day from March 14, 2015 to July 1, 2016 by failing to implement corrective actions in compliance with the deadlines stated in the 2012 Permit; and
- Kinder Morgan violated the Tier I corrective action requirements with regard to total zinc each and every day since May 11, 2015 by failing to implement corrective actions in compliance with the deadlines stated in the Permits.

In addition, with regard to discharges from **Outfall 003**:

- Kinder Morgan violated the Tier I corrective action requirements with regard to total aluminum, benzo(a)pyrene, benzo(b)fluoranthene 3,4, and chrysene each and every day since November 4, 2018 by failing to implement corrective actions in compliance with the deadlines stated in the Permits.

Kinder Morgan violated Schedules A.10.b. of the Permits each and every day since March 14, 2015 by failing to implement corrective actions in a timely manner, including implementation of modified control measures, even though such corrective actions are necessary to meet the effluent limitations and other conditions in the Permits.

D. Violations of Water Quality Based Effluent Limitations and Related Reporting Requirements.

Kinder Morgan violated its 2012 Permit and 2017 Permit and the Clean Water Act by *discharging pollutants* and stormwater associated with industrial activity in an amount or manner that causes or contributes to violations of the instream water quality standards established in Oregon Administrative Rule (“OAR”) 340-041 for the Willamette River, in violation of Schedules A.4. and F.A6. of the Permits. Schedules A.4.a. of the Permits prohibit Kinder Morgan from causing or contributing to a violation of instream water quality standards established in OAR 340-041. And Schedules F.A6. of the Permits require Kinder Morgan to comply with any applicable effluent standards or prohibitions established under OAR 340-041-0033 for toxic pollutants.

OAR 340-041-007(1) states that “the highest and best practicable treatment and/or control of wastes, activities, and flows must in every case be provided so as to maintain...toxic materials...at the lowest possible levels.” OAR 340-041-0033(1) prohibits the introduction of toxic substances above natural background levels in concentrations and/or combinations that may be harmful to public health, safety, aquatic life, and wildlife. And OAR 340-041-0033(2) states that levels of toxic substances in waters of the state may not exceed the applicable aquatic life criteria as defined in Table 30 under OAR 340-041-0083. ODEQ established these and other water quality standards to protect human health and

other important beneficial uses such as recreation, drinking water sources, and habitat for salmon and steelhead. Or. Rev. Stat. §§ 468B0.15, 0.48.

The Permits established reference concentrations for impairment pollutants based on these water quality standards. Kinder Morgan discharges into a water body (the Willamette River) identified as failing to meet water quality standards for iron, copper, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene 3,4, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, and indeno(1,2,3-cd)pyrene. Table 30 and Table 40 in OAR 340-041-0083 identify the concentrations of these toxic pollutants that may be harmful. Table 30 identifies toxic pollutant criteria for the protection of aquatic life. And Table 40 identifies concentrations of toxic pollutants “derived to protect Oregonians from potential adverse health impacts associated with long-term exposure to toxic substances associated with consumption of fish, shellfish, and water.” In its permit assignment letters to Kinder Morgan, ODEQ incorporated these aquatic life and human health criteria into the Permits as reference concentrations for impairment pollutants.

Kinder Morgan has violated and continues to violate Schedules A.4.a. and F.A6. of the Permits by discharging pollutants and industrial stormwater from the facility in amounts or manners that cause or contribute to violations of these and other water quality standards. As indicated in Tables 1-3 in Appendix A, discharges from Kinder Morgan’s Facility regularly contain elevated levels of each of these nine listed toxic impairment pollutants. Discharges of those pollutants from the Facility violated OAR 340-041-0033(1) because they contribute toxic substances above natural background levels in concentrations that may be harmful to public health, safety, aquatic life, and wildlife. With regard to iron and copper, the discharges also violated OAR 340-041-0033(2) by exceeding the applicable aquatic life criteria for these pollutants. And the discharges violated OAR 340-041-007(1) because Kinder Morgan has failed to use the highest and best practicable treatment to maintain toxic materials at the lowest possible levels.

Kinder Morgan violated Schedules A.4.a. and F.A6. of the Permits each and every day since February 12, 2015 that Kinder Morgan discharged iron, dissolved copper, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene 3,4, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, or indeno(1,2,3-cd)pyrene from the Facility. As noted in Tables 1-3 in Appendix A to this letter, some of those discharges and violations occurred on March 14, 2015; May 1, 2015; October 25, 2015; November 13, 2015; January 17, 2016; April 4, 2016; October 26, 2016; November 22, 2016; February 15, 2017; March 15, 2017; November 10, 2017; November 30, 2017, June 8, 2018; October 5, 2018; November 4, 2018; November 23, 2018; January 20, 2019; February 14, 2019; May 15, 2019; September 17, 2019; and October 16, 2019. Other violations occurred each and every day since February 6, 2015 on which there was 0.1 inch or more of precipitation at the Facility because, on information and belief, on those days the Facility discharged pollutants, industrial stormwater or wastewater to the Willamette River that included iron, dissolved copper, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene 3,4, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, or indeno(1,2,3-cd)pyrene in excess of one or more of the impairment pollutant benchmarks established in the Permits and permit assignment letters for the Facility.

Additionally, Kinder Morgan violated Schedules A.4.b. of the Permits by failing to comply with the investigation, reporting, and corrective action requirements in those permit conditions. Schedules A.4.b. of the Permits require Kinder Morgan to take certain actions upon becoming aware that a

discharge from the Facility caused or contributed to an exceedance of water quality standards, including: investigating the conditions that triggered the violation; reviewing the SWPCP to ensure compliance with the permit; submitting a Water Quality Standards Corrective Action report within thirty days of receiving the relevant monitoring data, which report must meet certain criteria stated in the Permits; and implementing any required corrective actions before the next storm event or within thirty days after discovering the violation, whichever comes first. Kinder Morgan violated these requirements each and every day since February 12, 2015 by failing to investigate the conditions triggering water quality exceedances for iron, dissolved copper, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene 3,4, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, or indeno(1,2,3-cd)pyrene; failing to review the SWPCP to ensure compliance with the permit; failing to submit each and every required Water Quality Standards Corrective Action report within thirty days of receiving the relevant monitoring data; and failing to implement required corrective actions before the next storm event or within thirty days after discovering the violation, whichever comes first.

E. Violations of Inspection Requirements.

Schedules B.7.a. of the Permits requires Kinder Morgan to perform monthly inspections of “areas where industrial materials or activities are exposed to stormwater and areas where stormwater control measures, structures, catch basins, and treatment facilities are located.” These inspections must include “visual observation for the presence of floating, suspended or settleable solids, color, odor, foam, visible oil sheen, or other obvious indicators of pollution in the stormwater discharge at all discharge point(s)....” When these observations show evidence of such stormwater pollution, Kinder Morgan must complete a Tier I corrective action report. These visual observations “must be conducted during a discharge event if one occurs during the month, regardless whether the monthly site inspection has already occurred.” Inspections must include all discharge points. And Schedules B.7.b. of the 2012 Permit and Schedule B.7.f. of the 2017 Permit require Kinder Morgan to document all inspections in an inspection report that includes certain specific information and that is retained on site and submitted to ODEQ or BES upon request.

Kinder Morgan violated the inspection requirements in Schedules B.7. of the Permits. On May 19, 2016 and again on October 26, 2016, Kinder Morgan reported “No Discharge” on the Facility’s monthly observation forms. But Schedule B.7.a.i.7. of the 2012 Permit required Kinder Morgan to conduct inspections when stormwater discharges were occurring. Kinder Morgan violated these inspection requirements in May 2016 and October 2016 by failing to inspect the Facility when discharges were occurring, as required, and every other time when Kinder Morgan failed to comply with this monthly inspection requirement.

Additionally, an inspection report from BES dated January 26, 2017 states that Kinder Morgan’s visual observations at Outfall B had been improperly conducted. These visual observations had occurred at the pipe’s outfall, which is not an appropriate location because that outfall is submerged and so facility stormwater discharge cannot be observed. Each instance where Kinder Morgan conducted monthly visual observations of stormwater discharges at a location where stormwater discharges cannot be observed is a violation of Schedule B.7.a.i.7. of the 2012 Permit, or a violation of Schedule B.7.a.vii. of the 2017 Permit, because Kinder Morgan conducted the inspection in a manner that did not allow it to observe the presence of floating solids, foam, visible oil sheen, or discoloration of stormwater discharges, as required.

Kinder Morgan also violated the inspection requirements in Schedule B.7.—specifically, Schedule B.7.a., B.7.b., and B.7.c.—by failing to inspect Outfalls 003 and 004 on a monthly basis between February 12, 2015 and when Kinder Morgan acknowledged discharges from those outfalls in late 2018.

F. Additional Violations Related to Outfalls 003 and 004.

In addition to the violations related to Outfalls 003 and 004 described above, Kinder Morgan violated other conditions of the Permits with respect to those outfalls, as follows:

- Schedules B.2.b. of the Permits require Kinder Morgan to ensure that stormwater samples are representative of discharges from the Facility. Kinder Morgan violated these permit conditions each and every day since February 12, 2015 that it sampled discharges from Outfalls A (001) or B (002) without sampling discharges from Outfalls 003 or 004 because samples from Outfalls A (001) and B (002) are not representative of samples from Outfalls 003 or 004; and
- Schedules B.2.c. of the Permits require Kinder Morgan to monitor each discharge point unless certain circumstances apply. Schedule B.2.e. and Table 4 of the 2012 Permit required Kinder Morgan to monitor stormwater discharges for statewide benchmark pollutants and applicable sector-specific benchmark pollutants four times per year and to monitor stormwater discharges for impairment pollutants two times per year. Schedule B.2.f. and Table 5 of the 2017 Permit then require Kinder Morgan to monitor stormwater discharges for statewide benchmark pollutants, applicable sector-specific benchmark pollutants, and any impairment pollutants four times per year. Kinder Morgan violated these conditions of the 2012 Permit and 2017 Permit by failing to monitor Outfalls 003 and 004 four times per year between February 12, 2015 and November 4, 2018.

G. Violations for Failing to Prepare and Submit Noncompliance Reports.

Kinder Morgan violated Schedules F.D6. of the Permits each and every day since February 12, 2015 by failing to report its noncompliance with the Permits, as required by those permit conditions. Schedules F.D6. of the Permits require Kinder Morgan to report all instances of noncompliance with its permit not reported under General Condition D4 or D5 at the time Kinder Morgan submits monitoring reports. Each noncompliance report must include: (1) a description of the noncompliance and its cause; (2) the period of noncompliance, including exact dates and times; (3) the estimated time the noncompliance is expected to continue if it has not been corrected; and (4) the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. Kinder Morgan violated Schedules F.D6. of the Permits each and every day since February 12, 2015 by failing to prepare and submit noncompliance reports that fully and accurately identify Kinder Morgan's noncompliance with the Permits and that include all the required information.

H. Violations of General Conditions.

Each and every permit violation described herein is also a violation of Schedules F.A1. of the Permits, which require Kinder Morgan to comply with all conditions of its Permits. Additionally, each and every permit violation described herein is a violation of Schedules F.A3. of the Permits, which require Kinder Morgan to take all reasonable steps to minimize or prevent any discharge in violation of the Permits. Kinder Morgan violated these permit conditions each and every day since February 12, 2015 by violating the Permits and by failing to take reasonable steps to minimize or prevent discharges in violation of the Permits.

Each and every Permit violation described herein is also a violation of Schedules F.B1. of the Permits, which require Kinder Morgan to “at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions” of the Permits. Kinder violated these permit conditions each and every day since February 12, 2015 by failing to properly operate and maintain all systems of treatment and control, including Kinder Morgan’s SWPCP, to achieve compliance with the Permits.

III. **KINDER MORGAN’S VIOLATIONS OF SECTIONS 301(a) OF THE CWA.**

Section 301(a) of the CWA prohibits any discharge of any pollutant from a point source to waters of the United States unless it is made in compliance with a NPDES permit issued under section 402 of the CWA. 33 U.S.C. §§ 1311(a) and 1362(6), (7), (12), (14). Kinder Morgan violated the statutory prohibition in Section 301(a) of the CWA, 33 U.S.C. § 1311(a), every day since February 12, 2015 by discharging pollutants, stormwater associated with industrial activity, non-industrial stormwater, and process wastewater from point sources at the Facility, including pipes, ditches, channels, holes and cracks in the shipping terminal at the Facility, and other discrete conveyances, to waters of the United States, including the Willamette River, the Columbia River, and the Pacific Ocean, when those discharges were not in compliance with an NPDES permit, as required. As described in this notice of intent to sue letter, Kinder Morgan has continuously violated the 2012 Permit and 2017 Permit throughout the last five years. Kinder Morgan’s discharges of pollutants, stormwater, and wastewater have therefore not been authorized by those permits, which means all discharges of pollutants, stormwater, and wastewater from the Facility are and have been in ongoing violation of Section 301(a) of the CWA.

In addition, Kinder Morgan violated Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), each and every day since February 12, 2015 by discharging pollutants, non-industrial stormwater, process wastewater, and stormwater associated with industrial activity to the Willamette River from Outfall 003 and Outfall 004 at the Facility without authorization of an NPDES permit.

IV. **PERSONS GIVING NOTICE.**

The full name, address, and telephone number of the party giving notice is:

Northwest Environmental Defense Center
10015 S.W. Terwilliger Boulevard
Portland, Oregon 97219

(503) 768-6726

V. ATTORNEYS REPRESENTING NEDC.

The attorneys representing NEDC in this matter are:

Paul Kampmeier
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811 First Avenue, Suite 468
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Telephone: (503) 841-6515

VI. CONCLUSION.

The NPDES permit and Clean Water Act violations alleged and described in this notice of intent to sue are ongoing. At the conclusion of the 60-day notice period, NEDC intends to file a lawsuit against Kinder Morgan under the citizen suit provisions of Section 505 of the Clean Water Act, 33 U.S.C. § 1365. Each of the above-described violations that occurred before November 2, 2015 subjects Kinder Morgan to a civil penalty of up to \$37,500 per day, and each above-described violation that occurred after November 2, 2015 subjects Kinder Morgan to a civil penalty of up to \$55,800 per violation per day. *See* 40 C.F.R. § 19.4. In addition to civil penalties, NEDC will seek injunctive relief to prevent further violations of the CWA and such other relief as is permitted by law, including recovery of NEDC's costs, attorneys' fees, expert witness fees, and other litigation costs. *See* 33 U.S.C. §§ 1365(a) and (d). Although the above-described violations reflect the information currently available to NEDC, NEDC intends to sue for all violations, including those yet to be uncovered and those committed after the date of this notice letter.

During the 60-day notice period NEDC will be willing to discuss effective remedies for the violations described in this letter. If you wish to pursue settlement discussions in the absence of litigation, we suggest that you initiate discussions within 10 days of receiving this notice so the parties can meet and discuss effective remedies for the violations alleged herein. NEDC does not intend to delay the filing of a complaint if discussions are ongoing when the notice period ends.

Kampmeier & Knutsen PLLC

By: 

Paul Kampmeier
Brian Knutsen

Northwest Environmental Defense Center

By: 

Jonah Sandford

cc: Mr. Richard Whitman, Director, Oregon Department of Environmental Quality
Mr. Andrew Wheeler, Administrator, U.S. Environmental Protection Agency
Mr. Chris Hladick, Region 10 Administrator, U.S. Environmental Protection Agency
Capitol Corporate Services, Inc., Registered Agent for Kinder Morgan Bulk Terminals, LLC in
Oregon, 698 12th Street S.E., Suite 200, Salem, Oregon 97301
Capitol Corporate Services, Inc., Registered Agent for Kinder Morgan Bulk Terminals, LLC in
Louisiana, 8550 United Plaza Boulevard, Building II, Suite 305, Baton Rouge, Louisiana 70809

APPENDIX A

Table 1

**Benchmark and Sector-Specific Pollutant
Discharge Monitoring Results
Reported by Kinder Morgan
Under the 2012 NPDES Permit**

Sample Date	Monitoring Location	pH (S.U.) (Bench-mark: 5.5 - 9.0 S.U.)	TSS (mg/L) (Bench-mark: 100 mg/L)	Total Copper (mg/L) (Bench-mark: 0.020 mg/L)	Total Lead (mg/L) (Bench-mark: 0.040 mg/L)	Total Zinc (mg/L) (Bench-mark: 0.12 mg/L)	Total Aluminum (mg/L) (Bench-mark: 0.75 mg/L)
03/14/15	A	8.2	10	0.0113	0.0553	0.111	1.17
5/11/15	A	9.33	28	0.0196	0.0481	0.311	1.6
03/14/15	B	10.43	7	0.00601	0.00559	0.0967	0.631
5/11/15	B	10.18	15	0.0194	0.0158	0.231	1.35
10/25/15	A	9.81	26	0.0132	0.0595	0.124	1.36
11/13/15	A	8.54	ND	0.0116	0.0533	0.109	1.23
01/17/16	A	7.41	11	0.0243	0.0364	0.0658	0.844
4/4/16	A	9	ND	0.0113	0.015	0.0601	0.951
10/25/15	B	10.23	9	0.0102	0.00887	0.105	0.758
11/13/15	B	9.92	ND	0.00581	0.00337	0.084	0.314
01/17/16	B	9.97	ND	0.00161	0.00219	0.118	0.194
4/3/16	B	10.25	5	0.0124	0.00907	0.0936	0.752
10/26/16	A	9.44	5	0.0087	0.0389	0.0729	0.811
11/22/16	A	9.17	7	0.00771	0.0521	0.0772	0.891
02/15/17	A	9.18	13	0.0146	0.0967	0.187	2.36
3/15/17	A	10.14	ND	0.0105	0.0616	0.131	1.37
10/26/16	B	9.98	7	0.0034	0.0024	0.0995	0.353
11/22/16	B	10.25	ND	0.00191	0.00172	0.14	0.21
02/15/17	B	10.12	10	0.00548	0.00712	0.123	0.792
3/15/17	B	9.99	6	0.00847	0.011	0.0797	1.33

Table 2

**Benchmark and Sector-Specific Pollutant
Discharge Monitoring Results
Reported by Kinder Morgan
Under the 2017 NPDES Permit**

Sample Date	Monitoring Location	pH (S.U.) (Benchmark: 5.5 - 9.0 S.U.)	TSS (mg/L) (Benchmark: 30 mg/L)	Total Copper (mg/L) (Benchmark: 0.020 mg/L)	Total Lead (mg/L) (Benchmark: 0.040 mg/L)	Total Zinc (mg/L) (Benchmark: 0.12 mg/L)	Total Aluminum (mg/L) (Benchmark: 0.75 mg/L)
11/10/17	001 (A)	9.44	129	0.0349	0.267	0.376	5.94
11/30/17	001 (A)	10.14	284	0.0723	0.438	0.722	11.5
06/08/18	001 (A)	10.2	90	0.0792	0.0813	0.431	6.15
11/10/17	002 (B)	10.3	41	0.00892	0.00788	0.162	1.15
11/30/17	002 (B)	10.22	15	0.00837	0.00683	0.0875	1.08
06/08/18	002 (B)	6.36	ND	0.00134	0.000346	0.0177	ND
10/05/18	001	9.27	72	0.032	0.0887	0.207	2.5
11/23/18	001	8.49	18	0.0186	0.0761	0.162	2.95
01/20/19	001	9.54	ND	0.00878	0.0315	0.0783	0.932
02/14/19	001	9.65	10	0.00885	0.0459	0.103	1.33
10/05/18	002	8.34	40	0.103	0.0135	0.209	1.45
11/23/18	002	7.56	20	0.00761	0.00549	0.148	0.708
01/20/19	002	7.78		0.00459	0.0028	0.125	0.305
01/20/19	002	7.78	ND	0.00411	0.00262	0.108	0.256
02/14/19	002	7.1	20	0.00412	0.0052	0.0804	0.498
05/15/19	002			0.0996	0.0191	0.332	2.15
11/04/18	003	7.96	ND	0.00365	0.00468	0.0242	0.956
11/23/18	003	8.06	ND	ND	0.00199	ND	0.793
1/20/19	003	8.38	5	0.00218	0.000768	0.00752	0.595
02/14/19	003	6.87	6	0.00114	0.00208	0.0164	0.13
09/17/19	001	9.35	67	0.0261	0.062	0.17	2.58
10/16/19	001	9.09	139	0.114	0.0954	0.336	3.83
09/17/19	002	7.66	49	0.0154	0.0104	0.178	1.13
10/16/19	002	7.82	69	0.0248	0.0165	0.267	1.8
09/17/19	003	6.46	ND	0.00397	0.00218	0.0654	ND
10/16/19	003	7.98	5	0.00246	0.00215	0.0266	0.309

Table 3

**Impairment Pollutant
Discharge Monitoring Results
Reported by Kinder Morgan
Under the 2012 and 2017 NPDES Permits**

Sample Date	Monitoring Location	Benzo(a) anthracene (mg/L) (Benchmark: 0.001 mg/L)	Benzo(a) pyrene (mg/L) (Benchmark: 0.001 mg/L)	Benzo(b) fluoranthene 3,4 (mg/L) (Benchmark: 0.001 mg/L)	Benzo(k) fluoranthene (mg/L) (Benchmark: 0.001 mg/L)	Chrysene (mg/L) (Benchmark: 0.001 mg/L)	Dibenz(a,h) anthracene (mg/L) (Benchmark: 0.001 mg/L)	Indeno (1,2,3-cd) pyrene (mg/L) (Benchmark: 0.001 mg/L)	Total Iron (mg/L) (Benchmark: 1.0 mg/L)	Dissolved Copper (mg/L) (Benchmark: 0.012 mg/L)
03/14/15	A	0.00163	0.00336	0.00432	0.00162	0.00208	ND	0.00302	3.29	
05/11/15	A								2.76	
03/14/15	B	ND	ND	ND	ND	ND	ND	ND	1.33	
05/11/15	B								3.13	
10/25/15	A	0.00273	0.00546	0.00837	0.00304	0.00401	0.00109	0.005	3.53	
11/13/15	A								3.97	
01/17/16	A	0.00202	0.00374	0.00496	0.00201	0.00265	ND	0.00354	2.35	
10/25/15	B	ND	ND	ND	ND	ND	ND	ND	1.76	
04/03/16	B								1.42	
10/26/16	A	ND	0.00167	0.0024	ND	0.0011	ND	0.00193	2.61	
11/22/16	A								2.92	
02/15/17	A	0.00193	0.00379	0.00507	0.00203	0.00263	ND	0.00377	7.27	
03/15/17	A								3.65	
02/15/17	B	ND	ND	ND	ND	ND	ND	ND	1.65	
03/15/17	B								2.76	
11/10/17	001 (A)	0.0107	0.0175	0.0253	0.00935	0.0141	0.00326	0.015	13.8	0.0288
11/30/17	001 (A)								30.2	
06/08/18	001 (A)	0.00119	0.00249	0.0045	0.00119	0.00234	ND	0.00253	7.48	0.0949
11/10/17	002 (B)	ND	ND	0.00114	ND	ND	ND	ND	2.27	0.00664
11/30/17	002 (B)								1.77	
10/05/18	001	0.00309	0.00659	0.01	0.00324	0.00484	0.00147	0.00654	5.8	0.0256
11/23/18	001	0.0016	0.00319	0.00501	0.00192	0.00249	ND	0.00335	7.3	0.0108
01/20/19	001	ND	ND	0.00122	ND	ND	ND	ND	1.81	0.00547
02/14/19	001	0.00122	0.00197	0.00296	0.00105	0.00166	ND	0.00242	3.85	0.00402
10/05/18	002	ND	ND	ND	ND	ND	ND	ND	2.96	0.0298
11/23/18	002	ND	ND	ND	ND	ND	ND	ND	1.4	0.0144
02/14/19	002	ND	ND	ND	ND	ND	ND	ND	1.17	0.00125
05/15/19	002								4.96	0.0794
11/04/18	003	ND	0.00131	0.00228	ND	0.00121	ND	0.00103	0.116	0.0021
09/17/19	001	0.00157	0.00281	0.00428	0.00159	0.0023	ND	0.00296	4.39	0.0082
10/16/19	001	0.0036	0.00648	0.00936	0.00346	0.00504	0.00121	0.00553	6.3	0.00774
09/17/19	002	ND	ND	ND	ND	ND	ND	ND	2.7	0.0122
10/16/19	002	ND	0.00101	0.00156	ND	0.00101	ND	ND	3.94	0.00989

CERTIFICATE OF SERVICE

I, Paul Kampmeier, declare under penalty of perjury of the laws of the United States that I am counsel for Northwest Environmental Defense Center and that on February 12, 2020, I caused copies of the foregoing Notice of Intent to Sue Under the Clean Water Act to be served on the following by depositing it with the U.S. Postal Service, postage prepaid, via certified mail, return receipt requested:

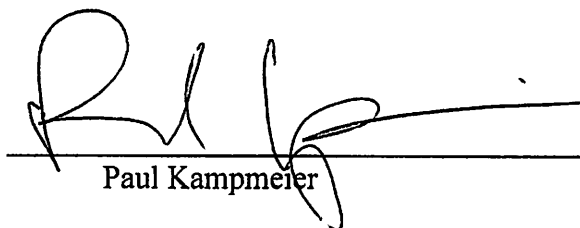
Director Richard Whitman
Oregon Department of Environmental Quality
700 N.E. Multnomah Street, Suite 600
Portland, Oregon 97232-4100

Administrator Andrew Wheeler
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave., N.W., Mail Code 1101A
Washington DC 20460

Regional Administrator Christopher Hladick
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Code 21-B03
Seattle, Washington 98101

Capitol Corporate Services, Inc.
c/o Registered Agent for Kinder Morgan Bulk Terminals, LLC
698 12th Street S.E., Suite 200
Salem, Oregon 97301

Capitol Corporate Services, Inc.
c/o Registered Agent for Kinder Morgan Bulk Terminals, LLC
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Paul Kampmeier